

J. List Policy
File Copy 52July 28th 1959.COCOM Document No. 3620COORDINATING COMMITTEE

4236058

Exceptions to Security Controls - Principles and ProceduresIntroduction

The exceptions procedures contained in this document are intended to be applied in such a way as

- (a) to preserve and promote the uniformity and unanimity that are fundamental to effective multilateral cooperation in the security control of trade with the Sino-Soviet Bloc and
- (b) to avoid such exports and provision of technological data and services to the Bloc as would frustrate or be inconsistent with the multilaterally agreed controls.

This document consolidates the principles and rules governing exceptions from the security controls which have been agreed between Member Countries. Requests for exceptions not falling under the specific types described will be examined by the Committee on the merits of the individual cases, taking into account such consideration as the exporting country may wish to put forth.

Where Committee agreement is given for an exception, it applies only to the individual transaction considered by the Committee, i.e., Committee agreement must be obtained individually for each new exception, unless the Committee decides otherwise.

Part A: General ExceptionsGeneral Principles

1. Subject to the special considerations laid down in the Committee's Principles and Procedures, exceptions to the general rule of embargo in respect of List I items will be made, after full consideration by the Committee, only when refusal to permit the export is deemed to involve a risk of damage to the economic, political or social situation of the exporting country, of a nature so serious as to override the security considerations involved.

Future Commitments

2. Governments will inform the Committee, in advance and in detail, regarding any trade negotiations or proposed transactions which may result in such exceptions and will invite the views of other members of the Committee. It is recognized, however, that there may be a few exceptional cases where the exigencies of the trade negotiations make it impossible to inform the Committee before entering into commitments involving exceptions. If such cases occur, the Committee will be informed as soon as possible thereafter.

Prior Commitments

3. It is recognized that prior commitments, i.e. contractual or other obligations entered into prior to the date of introduction of the control of the item concerned, may have to be fulfilled if an official commitment of a participating government is involved, or if, in the absence of an official commitment, that government decides, having due regard to the strategic importance of the goods and to the probable consequences of not allowing

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the commitment to be honoured that the export should not be prevented. Where a trade agreement provides for the supply of goods under general headings, the government concerned will make every effort to meet its commitments by supplying only those goods to which there is no security objection. In all cases where exceptions are made in order to fulfill prior commitments, the appropriate monthly statistical returns to the Coordinating Committee will indicate the considerations governing the decision reached. With respect to information filed with the Coordinating Committee concerning prior commitments, any Government may request further amplifying details. Renewals or extensions of trade agreements after the introduction of embargo controls on an item shall not constitute nor continue a prior commitment for that item.

Procedure for Submission of Exceptions.

4. Delegates who request the comments of participating Governments concerning an exception to the agreed controls should endeavour to provide information on the proposed export or trade negotiations as much in advance as possible, even though full details may not become available until later. The period of time provided for in paragraph 5 would not, however, be fixed until the Committee had met to consider a written statement containing the information necessary for the Committee to reach a decision in accordance with the principles and procedures on exceptions to the security controls.
5. The Committee would decide, on the merits of each case, how long a period should be allowed to Delegates for submitting the comments of their Governments. The period suggested by the Delegate submitting the proposed exception must be accepted, however, if in his Government's view the exigencies of the situation call for a shorter period than the other Delegates would prefer.
6. As a general rule, the comments of Governments should not be expected in less than 18 calendar days from the time that a complete written submission had been available to Delegates in both languages, and had been discussed initially in the Committee in order to determine whether sufficient information had been provided to permit a considered judgment.
7. At the request of the Delegate submitting the proposed exception, it would be discussed at the first possible meeting of the Committee, having priority over all other business unless the Committee should decide otherwise, provided that the complete written statement had been available at the Secretariat in either French or English for not less than twenty-four hours before the meeting.
8. A translation of the statement would be made available by the Secretariat as quickly as possible and would in any case be circulated at the first meeting at which the question was to be discussed.
9. If, after his Government had studied the information, any Delegate asked for additional time for submitting comments, this would be considered by the Committee and extra time could be agreed with the concurrence of the Delegate submitting the proposed exception.

Part B: Minimum shipments exceptions

General Principles

10. The following principles apply to the handling of minimum shipments or trivial exceptions in connexion with List I items:
 - (a) The procedure must be sufficiently flexible to permit participating Governments adequate freedom in authorising minimum shipments or trivial exceptions where there is no danger to the security of the West. Delays in dealing with such cases bring the control

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system into disrepute and make it more difficult to maintain this system against outside criticism.

- (b) The principle of servicing equipment previously supplied is recognised, subject to such safeguards as may be necessary from the security point of view.
- (c) In so far as the application of these principles involves any modification in the present controls, any such modification should not have the effect of opening up fresh trade in List I items.
- (d) A careful watch should be kept by the Committee on all exports of List I items so as to ensure that the accumulation of cases, each of which is itself trivial, does not constitute a danger to the security of the Free World.
- (e) Belief that the end-use in a particular case is harmless is not in itself a sufficient reason for authorising the export of a List I item. Evidence of harmless end-use, however, is one of the factors which should be taken into account provided no advanced technological know-how in the sense of criterion (b) is involved.

Review Arrangements

11. While it is expected that exports under these procedures are not likely to constitute any threat to the security of the Free World, it is advisable to keep the situation under review. To this end:

- (a) When any Government informs the Committee that it believes the previous minimum shipments of any item under these procedures have reached a level which indicates that further exports might frustrate the Committee's control objectives, further use of the cut-off procedure for that item will be suspended up to a maximum period of one month, while the matter is discussed and a decision is reached in the Committee.
- (b) The subject of minimum shipments and trivial exceptions should be reviewed and, if necessary, the procedures should be revised annually in the light of the volume of exports and the experiences of participating countries.

De Minimis Cases

12. De minimis cases are defined as those involving exports of List I items under circumstances in which diversion to any strategic use would be either impracticable or unlikely, or of no consequence from the strategic point of view. The procedure for handling List I minimum shipments or trivial exceptions of the de minimis type, in accordance with the foregoing principles, is as follows:

- (a) Participating Governments may authorise exports which are considered to fall within this category but which individually do not exceed \$ 150 in value without consulting the Committee. Such exports should be reported to the Committee in the monthly statistical returns. This exception does not apply to Items 1548, 1555, 1559, 1781, for which prior consultation is necessary in all cases.
- (b) Exports exceeding \$ 150 in value should be subject to the Committee's prior consultation procedure. If no objections are raised within the agreed time limit, the Government concerned should be free to proceed with the export without discussion in

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the Committee. The time limit will not exceed 18 calendar days from the date of submission of the case, in English and French, to the Committee, but the Government concerned in specific cases may request the Committee to fix a shorter time limit. It would remain open to any Delegate to require the full period of 18 calendar days to obtain his Government's comments.

Servicing Cases

13. Servicing cases are defined as those involving exports of List I items as parts to service equipment previously supplied. The procedure for handling List I minimum shipments or trivial exceptions of the servicing type, in accordance with the foregoing principles, is as follows:

- (a) Participating Governments are free to authorize any export not exceeding \$ 1,500 in value provided it is the minimum quantity required to service non-embargoed equipment previously supplied. All such exports should be reported to the Committee in the monthly statistical returns with full details, including details of the type and quantity of the equipment previously supplied.
- (b) Export of List I items required to service equipment previously supplied in cases not covered by sub-paragraph (a) above should, save in exceptional cases, be subject to the Committee's prior consultation procedure. If no objections are raised within the agreed time limit, the Government concerned should be free to export without discussion in the Committee. The time limit will not exceed 18 calendar days from the date of submission of the case to the Committee, in English and French, but the Government concerned in specific cases may request the Committee to fix a shorter time limit. It would remain open to any Delegate to require the full period of 18 calendar days to obtain his Government's comments.

Accident of Definition Cases

14. Accident of definition cases are defined as those involving the export of an item which, though covered by a List I definition, is thought not to be within the intention of that definition because, owing to the technical nature of the particular item, it cannot be used for the purpose for which the item was included on List I. Cases falling within this category are likely to be of greater value than those described in paragraphs 12 and 13 above, and there may be room for greater differences of technical opinion. The procedure for handling List I minimum shipments or trivial exceptions of the accident of definition type, in accordance with the foregoing principles, is as follows:

- (a) The export of items which are considered to fall within this category and which do not exceed \$ 1,500 in value may be authorized by participating Governments only after prior notification to the Committee. Export should not be authorized until 18 calendar days have elapsed from the date of submission of the case to the Committee in English and French.
- (b) Items valued at over \$ 1,500 should be subject to the Committee's normal prior consultation procedure. If no objections are raised within the agreed time limit, the Government concerned should be free to proceed with the export without discussion in the Committee. The time limit will not exceed 18 calendar days from the date of submission of the case to the Committee, in English and French, but the Government concerned in specific cases may request the Committee to fix a shorter time limit. It would remain open to any Delegate to require the full period of 18 calendar days to obtain his Government's comments.

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- (c) Wherever possible, countries putting forward cases of this nature should accompany them with a revised definition intended to avoid such an accident in future. If it proves impossible to exclude harmless types by redefinition, a licensing guide or other appropriate technique giving effect to the Committee's views should be adopted.

Notes to Part B (Minimum shipments exceptions).

15. (a) The Committee will continue to be guided by the historical concept of minimum shipments as indicated by the value (\$ 150) above which all exports must be submitted to the Committee for consultation prior to authorisation. Exceptions of more than a minimal value or quantity may be submitted to the Committee under this procedure, provided that the exporting country believes it can demonstrate to the satisfaction of the other member governments that the proposed export is of no consequence from a security point of view. Member governments will evaluate proposals made under this procedure in terms of the adequacy of the proposing country's demonstration that the proposed export will have no security consequence. Quantity or value will be important factors in such evaluation. The procedure will be applied with due regard to the cumulative effect of exceptions, and consistently with the continuing purpose of the Committee to limit exceptions, of all kinds, to the fewest possible number, mindful especially that the agreed embargo list comprises a smaller number of items than before.
- (b) The exceptions contemplated in paragraph 12 above (de minimis cases) apply also to the following Atomic Energy List Items: 6, 7, 9, 10, 14, 15, 17, on the understanding that the value cut-off provision in sub-paragraph 12(a) above, permitting the export of items up to a value of \$ 150 without consultation, does not apply. For these items, no export is permitted without prior consultation.
- (c) The value cut-off provision in sub-paragraph 12(a) above (de minimis cases), permitting the export of items up to a value of \$ 150 without consultation, does not apply to the following List I items: 1548, 1555, 1559, 1781.
- For these items, no export is permitted without prior consultation.
- (d) The exceptions contemplated in paragraph 14 above (Accident of definition cases) apply also to items on the Atomic Energy and Munitions Lists, on the understanding that the value cut-off provision in sub-paragraph 14(a), permitting the export of items up to a value of \$1,500 without consultation, does not apply. For these items no export is permitted without prior consultation.

Part C: Custom. processing procedure

16. The current exceptions procedure for custom. processing will be found in the Appendix to COCOM 2275 with the omission of the references to List II and the substitution of the words "Watch List" (List IV) for List III.

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Part D: Polish exceptions procedure

17. The current exceptions procedure for Poland will be found in COCOM Documents 2631, 2824, paragraph 26, and 2869.103.

Entry into force

18. The Committee decided that the exceptions procedures set out above would come into force on the 1st September 1959.

C O N F I D E N T I A L